

Securities and Exchange Commission

§ 240.15a-1

§ 240.14e-8 Prohibited conduct in connection with pre-commencement communications.

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

(a) Is making the announcement of a potential tender offer without the intention to commence the offer within a reasonable time and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

[64 FR 61466, Nov. 10, 1999]

§ 240.14f-1 Change in majority of directors.

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, not less than 10 days prior to the date any such person take office as a director, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor, the issuer shall file with the Commission and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 6 (a), (d) and (e), 7 and 8 of Schedule 14A of Regulation 14A (§240.14a-101 of this chapter) to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

Eight copies of such information shall be filed with the Commission.

[33 FR 11017, Aug. 2, 1968, as amended at 34 FR 6101, Apr. 4, 1969; 51 FR 42072, Nov. 20, 1986]

EXEMPTION OF CERTAIN OTC DERIVATIVES DEALERS

§ 240.15a-1 Securities activities of OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§240.15b9-2), regular broker-dealer margin rules (§240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-1), specified internal risk management control systems (§240.15c3-4), recordkeeping obligations (§240.17a-3(a)(10)), and reporting responsibilities (§240.17a-12). They are also subject to alternative net capital treatment (§240.15c3-1(a)(5)). This rule 15a-1 uses a number of defined terms in setting forth the securities activities in which an OTC derivatives dealer may engage: "OTC derivatives dealer," "eligible OTC derivative instrument," "cash management securities activities," and "ancillary portfolio management securities activities." These terms are defined under Rules 3b-12 through 3b-15 (§240.3b-12 through §240.3b-15).

(a) The securities activities of an OTC derivatives dealer shall:

(1) Be limited to:

(i) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(ii) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(iii) Engaging in cash management securities activities;

(iv) Engaging in ancillary portfolio management securities activities; and

(v) Engaging in such other securities activities that the Commission designates by order pursuant to paragraph (b)(1) of this section; and

(2) Consist primarily of the activities described in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section; and

(3) Not consist of any other securities activities, including engaging in any transaction in any security that is not

an eligible OTC derivative instrument, except as permitted under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(b) The Commission, by order, entered upon its own initiative or after considering an application for exemptive relief, may clarify or expand the scope of eligible OTC derivative instruments and the scope of permissible securities activities of an OTC derivatives dealer. Such orders may:

(1) Identify other permissible securities activities;

(2) Determine that a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument;

(3) Clarify whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument; or

(4) Clarify whether certain securities activities are within the scope of ancillary portfolio management securities activities.

(c) To the extent an OTC derivatives dealer engages in any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, such transaction shall be effected through a registered broker or dealer (other than an OTC derivatives dealer) that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is an affiliate of the OTC derivatives dealer, except that this paragraph (c) shall not apply if:

(1) The counterparty to the transaction with the OTC derivatives dealer is acting as principal and is:

- (i) A registered broker or dealer;
- (ii) A bank acting in a dealer capacity, as permitted by U.S. law;
- (iii) A foreign broker or dealer; or
- (iv) An affiliate of the OTC derivatives dealer; or

(2) The OTC derivatives dealer is engaging in an ancillary portfolio management securities activity, and the transaction is in a foreign security, and a registered broker or dealer, a bank, or a foreign broker or dealer is acting as agent for the OTC derivatives dealer.

(d) To the extent an OTC derivatives dealer induces or attempts to induce

any counterparty to enter into any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, any communication or contact with the counterparty concerning the transaction (other than clerical and ministerial activities conducted by an associated person of the OTC derivatives dealer) shall be conducted by one or more registered persons that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is associated with an affiliate of the OTC derivatives dealer, except that this paragraph (d) shall not apply if the counterparty to the transaction with the OTC derivatives dealer is:

- (1) A registered broker or dealer;
- (2) A bank acting in a dealer capacity, as permitted by U.S. law;
- (3) A foreign broker or dealer; or
- (4) An affiliate of the OTC derivatives dealer.

(e) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

(f) For purposes of this section, the term *affiliate* means any organization (whether incorporated or unincorporated) that directly or indirectly controls, is controlled by, or is under common control with, the OTC derivatives dealer.

(g) For purposes of this section, the term *foreign broker or dealer* means any person not resident in the United States (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by § 240.15a-6) that is not an office or

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branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of “broker” in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) or “dealer” in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).

(h) For purposes of this section, the term *foreign security* means any security (including a depositary share issued by a United States bank, provided that the depositary share is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904)) issued by a person not organized or incorporated under the laws of the United States, provided the transaction that involves such security is not effected on a national securities exchange or on a market operated by a registered national securities association; or a debt security (including a convertible debt security) issued by an issuer organized or incorporated under the laws of the United States that is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904).

(i) For purposes of this section, the term *registered person* is:

(A) A natural person who is associated with a registered broker or dealer and is registered or approved under the rules of a self-regulatory organization of which such broker or dealer is a member; or

(B) If the counterparty to the transaction with the OTC derivatives dealer is a resident of a jurisdiction other than the United States, a natural person who is not resident in the United States and is associated with a broker or dealer that is registered or licensed by a foreign financial regulatory authority in the jurisdiction in which such counterparty is resident or in which such natural person is located, in accordance with applicable legal requirements, if any.

[63 FR 59396, Nov. 3, 1998]

EXEMPTION OF CERTAIN SECURITIES FROM SECTION 15(A)

§ 240.15a-2 Exemption of certain securities of cooperative apartment houses from section 15(a).

Shares of a corporation which represent ownership, or entitle the holders thereof to possession and occupancy, of specific apartment units in property owned by such corporations and organized and operated on a cooperative basis are hereby exempted from the operation of section 15(a) of the Securities Exchange Act of 1934, when such shares are sold by or through a real estate broker licensed under the laws of the political subdivision in which the property is located.

(Secs. 3, 48 Stat. 882, as amended, 895, as amended; 15 U.S.C. 78c, 78o)

[13 FR 8204, Dec. 22, 1948]

§ 240.15a-3 [Reserved]

§ 240.15a-4 Forty-five day exemption from registration for certain members of national securities exchanges.

(a) A natural person who is a member of a national securities exchange shall, upon termination of his association with a registered broker-dealer, be exempt, for a period of forty-five days after such termination, from the registration requirement of section 15(a) of the Act solely for the purpose of continuing to effect transactions on the floor of such exchange if (1) such person has filed with the Commission an application for registration as a broker-dealer and such person complies in all material respects with rules of the Commission applicable to registered brokers and dealers and (2) such exchange has filed with the Commission a statement that it has reviewed such application and that there do not appear to be grounds for its denial.

(b) The exemption from registration provided by this rule shall not be available to any person while there is pending before the Commission any proceeding involving any such person pursuant to section 15(b)(1)(B) of the Act.

[41 FR 18290, May 3, 1976]